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THE NORDIC MODEL APPROACH TO PROSTITUTION: FOREIGN EXPERIENCE AND UKRAINE

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*The paper is analysing the Nordic/Equity Model approach to prostitution. The problems connected to the sex trade in many countries are now turning to what is known as the «Nordic Model» on prostitution, which criminalizes the purchase of sex, targeting law enforcement measures at sex buyers. However, in contrast to the Nordic model, there are some countries where prostitution is considered legal job (e.g., Germany). These two situations - from criminal punishment of prostitutes' clients to prostitution as legal work - are two very different models. Many European countries (including Ukraine) have different approach – punishment for prostitution itself or partial legalisation of prostitution. **Purpose:** the main purpose of the paper is to analyse the current Art. 303 of the Criminal Code of Ukraine in terms of compliance with international legal acts, to compare experience of foreign countries and propose appropriate changes to the Criminal Code. **Methods:** the dogmatic method as well as analysis of statistical data were used during the analysis. **Results:** according to the comparison of scientific and legislative approaches of Ukraine and Sweden, analysis of recommendations of the Council of Europe and European Parliament, our state is already close to the Nordic model today. However, this is now only a theoretical proposition that needs further reinforcement. **Discussion:** it is proposed to amend the Art. 303 of the Criminal Code of Ukraine as follows: «involving a person into prostitution or forcing him/her into prostitution by using that person's deceit, blackmail or vulnerability, or using or threatening to use violence, or engaging in sexual intercourse with another person for a fee, even for that person's consent, or pimping».*

Keywords: criminal liability; prostitution; pimping; sex traffic; Nordic Model.

Introduction. The Nordic Model approach to prostitution decriminalizes all those who are prostituted, provides support services to help them exit, and makes buying people for sex a criminal offence, in order to reduce the demand that drives sex trafficking. The problems connected to the sex trade made many countries turn to what is known as the “Nordic Model” on prostitution (also called the Equity model), which criminalises the purchase of sex, targeting law enforcement measures at sex buyers. The legislation has been very suc-

cessful in the countries where it has been adopted – leading to a reduced demand for sexual services and thereby becoming a powerful tool in combating sex trafficking. In 2014 the Council of Europe recommended all member states to adopt the Nordic approach on prostitution after having conducted an extensive report on the effects of this approach as opposed to legalization. In 1999, Sweden became the first country to adopt the Nordic Model which soon led to street prostitution being reduced to half due to the drop in demand. Another positive effect was that

social attitudes towards purchasing sex shifted and today the majority of the Swedish population, especially young people, support this law. However, in contrast to the Nordic model, prostitution is legal job in some countries (e.g., Germany, the Netherlands). These two situations - from criminal punishment of prostitute clients to prostitution as legal work - are two different approaches to human rights and trafficking problem. Many European countries (including Ukraine) have different approach – punishment for prostitution itself or partial legalisation of prostitution. The choice of a further path - between the "partial decriminalization" – Nordic model and the full legalization of prostitution, is a priority for the criminal law of Ukraine.

Analysis of research and publications. Many scholars have paid attention to the issue of counteracting prostitution. Among them should be noted V.V. Kuznetsov, L.V. Plotnikova, V.T. Dsiuba, L.S. Kuchanska, A.V. Landina, Y.A. Topolskova, Cecilie Hoigard, Catharine A. MacKinnon, Lori Watson, Gunilla Ekberg, Rahel Gugel etc.

The purpose of the article is to analyse the current Art. 303 of the Criminal Code of Ukraine in terms of compliance with international legal acts and experience of foreign countries and propose appropriate changes to the Criminal Code.

Presentation of the basic material. Ukraine is a signatory of a number of international conventions on the issues of human trafficking and prostitution.

Ukraine has ratified UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, that defines prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. As the signatory to the Convention, Ukraine has obligations to punish any person who, to gratify the passions of another exploits the prostitution of another person, even with the consent of that person (Art. 1). As we can see, traffic in persons is directly related to prostitution, prostitution is incompatible with human rights and the issue of consent is

irrelevant in such cases as regards all people, not only children.

Ukraine is a signatory of Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002) [1].

According to the Protocol, "child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration". Moreover, "each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis: (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined".

The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, known in short as the Worst Forms of Child Labour Convention No 182, was adopted by the International Labour Organization (ILO) in 1999 [2]. This ILO Convention provides that "for the purposes of this Convention, the term the worst forms of child labour comprises: the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances".

In accordance with Article 6 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women [3], States Parties shall take all appropriate measures, including legislation, to end all forms of trafficking in women and the use of prostitution by women. Let's analyse measures are considered appropriate and recommended in the European Union, by the Council of Europe and UN.

The Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children [3], supplementing the UN Convention against Transnational Organized Crime (ratified by Ukraine), requires States parties to "take or improve legislative or other measures... aimed at counteracting the demand for exploitation of people, especially women and children, in all its forms, as it leads to trafficking in human beings».

The Council of Europe Convention on Action against Trafficking in Human Beings [4], ratified by Ukraine, calls demand one of the root causes of trafficking in human beings. European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103 (INI)) [5] states that demand reduction should be part of an integrated strategy to counter trafficking in human beings. Resolution 2013/2103 (INI) emphasizes that by treating prostitution as legal work, decriminalizing the sex industry as a whole and legalizing prostitution we do not protect vulnerable women and minors from violence and exploitation, but put them at greater risk of violence, and at the same time encouraging the rise of prostitution. Consequently, the number of women and minors suffering from abuse in case of legalization is increasing.

Finally, in its Resolution of 2014, the Parliamentary Assembly of the Council of Europe calls on all member states of the Council of Europe consider criminalising the purchase of sexual services, based on the Nordic model, as the most effective tool for preventing and combating trafficking in human beings. Adherence to and implementation of Council of Europe standards is considered one of the criteria for EU membership.

As we can see, all the stated documents emphasise that countries should be fighting demand as the root cause of trafficking in human beings and the Council of Europe states that with this purpose criminalising the purchase of sexual services, based on the Nordic model, should be implemented.

According to the current version of Art. 303 of the Criminal Code of Ukraine the punishment is envisaged for “engaging person in employment to prostitution or compulsion to engage in prostitution, involving deceit, blackmail or vulnerable state of a person, or with imposition of violence or threat of violence, or pimping” [7]. According to the Swedish Penal Code [8] “a person who promotes or improperly financially exploits the casual sexual relations for payment of another person shall be sentenced for procuring to imprisonment for at most four years”. Moreover, a person who, holding the right to the use of premises, grants the right to use them to another in the knowledge that

the premises are wholly or to a substantial extent used for casual sexual relations for payment and omits to do what can reasonably be expected to terminate the granted right, he or she shall, if the activity continues or is resumed at the premises, be considered to have promoted the activity and shall be sentenced in accordance with the first, paragraph. If the crime provided for in Section 8 of the Swedish Penal Code is gross, imprisonment for at least two and at most six years shall be imposed for gross procuring. In assessing whether the crime is gross, special consideration shall be given to whether the accused promoted casual sexual relations for payment on a large scale or ruthlessly exploited another.

G. Ekberg notes that «the legislation that prohibits the purchase of a sexual service came into being as one in a series of preventative laws and measures aimed specifically at the protection of vulnerable women and girls against serious acts of sexual violence. The aim was also to create a society where the culture of domination through prostitution is transformed into a culture where the human rights of all women and girls are protected» [9, p. 19].

According to V.V. Kuznetsov, the objective side of the (art. 303 CC of Ukraine) crime involves three separate types (forms) that differ from one another by the features of the objective side: 1) involvement of a person in prostitution; 2) forcing a person to engage in prostitution; 3) pimping. According to V.V. Kuznetsov, inclining to engage in sexual relations for a fee even a single time can be considered as involvement in prostitution. The legislator, according to V.V. Kuznetsov, along with these three forms, provided 4 ways of committing this crime: 1) deception; 2) blackmail; 3) use of a vulnerable person; 4) the use or threat of violence [10, p. 38].

The comparison of scientific and legislative approaches of Ukraine and Sweden show that our state is already close to the Nordic model. The crime under Art. 303 of the Criminal Code of Ukraine includes involvement of a person in prostitution using a persons' vulnerability (inclining to engage in sexual relations even for a fee single time), and is punishable under Art. 303 of the Criminal Code of Ukraine. However, this is now only a theoretical proposition, which needs further reinforcement.

Conclusions. For this purpose it is proposed to amend the Criminal Code of Ukraine as follows:

«involving a person into prostitution or forcing him/her into prostitution by using that person's deceit, blackmail or vulnerability, or using or threatening to use violence, or engaging in sexual intercourse with another person for a fee, even for that person's consent, or pimping».

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«СКАНДИНАВСЬКА МОДЕЛЬ» ПРОТИДІЇ ПРОСТИТУЦІЇ: ІНОЗЕМНИЙ ДОСВІД І УКРАЇНА

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*У статті проаналізовано «скандинавську модель» протидії проституції. Проблеми, пов'язані з торгівлею сексом, багато країн зараз вирішують за зразком, відомим у науці як «скандинавська модель» протидії проституції, яка криміналізує купівлю сексу, націлюючи правоохоронні заходи на покупців сексу. Однак, на відміну від «скандинавської моделі», проституція є легальною роботою в багатьох країнах (наприклад, Німеччині). Ці дві ситуації - від кримінального покарання клієнтів повій до проституції як легальної роботи - є двома крайніми точками. Багато європейських країн (включаючи Україну) знаходяться між ними. Так, в Україні зараз відсутнє покарання за проституцію, а формулювання вступу у статевий зв'язок з використанням вразливого стану в теорії кримінального права включає вступ у статевий зв'язок як клієнта за плату. **Мета:** основна мета статті - проаналізувати чинну ст. 303 Кримінального кодексу України в частині дотримання міжнародних правових актів та запозичення досвіду зарубіжних країн, а також запропонувати відповідні зміни до Кримінального кодексу України. **Методи:** для досягнення цих цілей використовувався догматичний метод, компаративний метод, а також аналіз статистичних даних. **Результати:** відповідно до порівняння наукових та законодавчих підходів України та Швеції, наша держава вже сьогодні близька до «скандинавської моделі». Однак, це лише теоретичне положення, яке потребує подальшого законодавчого закріплення. **Обговорення:** пропонується внести зміни до Кримінального кодексу України, сформулювавши їх таким чином: «залучення людини до зайняття проституцією або примушування до зайняття проституцією шляхом використання обману, шантажу чи вразливого стану або застосування насильства, або погрози насильства, або вступ в статевий акт з іншою особою за певну плату, навіть за згодою цієї особи, або сутенерство».*

Ключові слова: кримінальна відповідальність; проституція; сутенерство; сексуальний трафік; «скандинавська модель».